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UNCLAS SECTION 01 OF 03 BRASILIA 002038

SIPDIS

SENSITIVE  
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DEPT FOR EB/TPP/IPE JENNIFER BOGER  
DEPT PASS USPTO  
DEPT PASS USTR FOR KATHERINE DUCKWORTH AND JENNIFER CHOE GROVES  
USDOC FOR ITA/MAC/OIPR CASSIE PETERS  
USDOC FOR ITA/MAC/WH/OLAC/MCAMPOS

E.O. 12958: N/A

TAGS: KIPR ETRD ECON BR

SUBJECT: BRAZIL: POST OCR FINDINGS

REF: A) State 107819; B) Brasilia 1620; C) Brasilia 680; D) Brasilia

2813

**¶1.** (SBU) Summary: Post recommends retaining Brazil on the Watch List based on its continued strong overall anti-piracy enforcement efforts and in light of some continuing problem areas. The value of pirated and contraband items seized by Receita Federal in the first six months of 2007 was over USD 285.5 million - an increase of more than 36 percent over the same period in 2006 and only 15 percent less than reported confiscations over the first nine months of last year. GOB state and federal authorities have conducted anti-piracy operations in the Tri-Border Area and have taken action against street vendors and shops in some of the more notorious piracy districts of Sao Paulo and Rio de Janeiro, including the Stand Center, Galeria Page and various Camelodromos. Projections based on Federal Police data predict a significant increase for 2007 in Federal Police confiscations of counterfeit and contraband electronics and pharmaceutical drugs, an 8.5 percent drop in seizures of pirated CDs and DVDs, and a slight decrease (3.5 percent) in collections of contraband electronic goods. (Note: The third major federal anti-piracy enforcement agency, Rodoviaria Federal - Federal Highway Patrol - did not provide interdiction data to Post. End note.) GOB action against internet piracy resulted in the removal of 19,878 internet advertisements, the ejection of 3,882 companies from the internet and the closure of 183 web sites through September 2007.

**¶2.** (SBU) The GoB is streamlining patent and trademark processing and expects backlogs for both areas to continue to decrease. Legislation developed by the public-private National Anti-Piracy Council (CNCP) that addresses many industry concerns, including partial sampling and destruction of pirated goods, has widespread support among key GoB ministries. The bill is currently in President Lula's office for final, and expected, approval before submission to the Brazilian Congress for consideration. Despite this progress, a number of issues remain outstanding. A leading industry association continues to complain about copyright violations of printed materials at campus copy-shops. Post has received no indication of increased GoB vigilance at alternative border crossings. The GoB has not been able to provide numbers for arrests and convictions of IPR violators, although based on past experience, this number is expected to remain low. End Summary.

3 (U) Per reftel A, the following is Embassy Brasilia's input for the Special 301 Out-of-Cycle (OCR) Review of Brazil. Because the GoB typically publishes its enforcement data at year-end, certain final data on its anti-piracy enforcement actions is not yet available for this report. Nonetheless, Post believes that sufficient information is currently available to provide an accurate

portrait of GoB anti-piracy enforcement efforts for 2007.

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Enforcement Activities  
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¶4. (SBU) Two of the three main federal enforcement agencies involved in anti-piracy interdiction - Receita Federal (the Brazilian Customs and Internal Revenue Service) and the Federal Police - provided data on 2007 anti-piracy activities. The third, Rodoviaria Federal (Federal Highway Patrol), did not. The National Council Against Piracy (CNCP) provided consolidated state and federal data on major raids. Receita Federal reported that it apprehended over USD 285.5 million in contraband items in the first six months of 2007, an increase of over 36 percent in comparison to the same period in 2006 (Note: All figures were converted using the 10/19/07 exchange rate of BR 1.80/USD. End Note.)

¶5. (SBU) Based on Federal Police data on quantities of contraband seized through August 10, Post estimates an 8.5 percent drop in Federal Police confiscations of pirated CDs and DVDs and a slight drop (3.5 percent) in collections of contraband electronic goods for calendar year 2007. In contrast, confiscations of counterfeit and contraband electronics and pharmaceutical drugs are projected to increase in 2007, up 15.6 and 43.4 percent respectively.

¶6. (SBU) National Council Against Piracy (CNCP) data indicates that federal and state enforcement officials seized 1,472,528 contraband items in raids on known marketplaces through September 2007. Among these actions is a year-long operation targeting buses crossing into Brazil in the Tri-Border area (538,038 seizures as of August 31) and ongoing actions against street vendors and shops in some of the more notorious piracy districts in Sao Paulo and Rio de Janeiro, including the Stand Center, Galeria Page and various Camelodromos.

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Internet Piracy  
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¶7. (SBU) The GoB appears to be taking internet piracy more seriously. A key GoB official, Vice Minister of Justice Luiz Paulo Barreto assured recording industry representatives in April that he would drop his previous public opposition to legal actions filed by them against Brazilian end-users of pirated music (reftel C). CNCP data showed that, through September 2007, Brazilian authorities had removed 19,878 internet advertisements touting pirated items, removed 3,882 companies from the internet and shut down 183 web sites - all for violation of Brazil's anti-piracy statutes.

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Patents and Trademarks  
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¶8. (SBU) Although Brazil's patent backlog remains high, estimated at between 130,000 and 150,000 applications, the GoB has taken concrete steps to streamline processing, including an upgrade of its outdated computer system. Over the past two years it has increased the number of patent and trademark examiners over 155% from 180 to 460 and increased median salaries 50% to retain experienced employees. By the end of 2007, the GoB estimates that new patent applications will be adjudicated within five years of submission; by the end of 2009 the goal is four years. The GoB has also raised trademark approvals almost six-fold since 2003 and expects to shorten processing time to less than a year by the end of 2007, down from the current 18 month wait.

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Federal Legislation  
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¶9. (SBU) The CNCP's Legislation Working Group, with input from a private sector forum, developed draft legislation in 2005 that proposes a number of changes in the country's penal code and

industrial property law. Among the suggested changes are: expansion of vehicle seizure authority, clarification of procedures for seizure and destruction of goods, and permission for law enforcement agencies to retain only samples for use in litigation. The bill also allows for different penalties for individual offenders from those involved in larger operations; incorporates penalties for software copyright violation into the penal code; and stiffens penalties if pirated goods are imported (reftel D). The bill, widely supported by GoB Ministries, is currently in President Lula's office for final, and expected, approval before submission to the Brazilian Congress for consideration. (Comment: GoB anti-piracy legislation is generally TRIPS compliant. End Comment.)

¶10. (SBU) GoB interlocutors have told EconOff they oppose any legislation that would impose a blanket increase in jail time for IPR violators on the grounds that there is no room in already overcrowded Brazilian prisons for small-time IPR offenders. They also feel there is a social cost to incarcerating low income IPR violators, who are usually the sole support for their families.

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Pharmaceutical Data Protection  
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¶11. (SBU) Although the Brazilian Law on Industrial Property currently prohibits disclosure and use of undisclosed test data, pharmaceutical industry representatives continue to voice concern over the potential for release of confidential data submitted to ANVISA as part of the drug patent approval process. Brazil's multinational pharmaceutical industry association, Interfarma (which also includes representatives of U.S. companies), has been unsuccessful in its attempts to get Congress to pass a law specifically addressing data protection. Currently, civil action is the only avenue available to drug companies harmed by the release of confidential data. However, Interfarma has not brought to Post's

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attention any cases in which data confidentiality has, in fact, been breached.

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Border Crossings  
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¶12. (SBU) Brazil's opening of a customs office in front of the Amistad bridge crossing into Brazil has been a significant step in combating IPR piracy, increasing the cost to smugglers who have to use less convenient alternative routes. Unfortunately, Post has received reports that these secondary routes, in particular through the state of Mato Grosso, are seeing more use and border crossings are not manned full-time by the GoB. There are also indications that smugglers are taking advantage of Mercosul transportation rules and transporting pirated goods across Argentina to enter Brazil through Uruguay.

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Campus Copy-Shops  
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¶13. (SBU) A representative of ABDR (Brazilian Association for Reprographic Rights) recently characterized the book piracy situation in Brazil as "critical" to EmbOff. He attributed this problem to a lack of attention by GoB authorities, in particular the Ministry of Education, adding that the progress made with regards to software and music piracy is lacking in the book publishing industry.

¶14. (SBU) According to ABDR, internal rules issued by University of Sao Paulo (USP) and the Pontifical Catholic University of Rio de Janeiro (PUC) allow books not written in Portuguese to be freely copied, if not available for sale at campus book stores. ABDR claims that the university justifies its internal rule by stating that access to knowledge and education are fundamentally protected under the Brazilian constitution. (Comment: Under Brazilian

copyright law, "the one-time reproduction of small passages of a work for the copier's private use without the intention of making a profit" is allowed, but the Law does not define what constitutes a "small passage." End Comment.)

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Arrests and Convictions  
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¶15. (SBU) GoB interlocutors were unable to provide consolidated arrest and conviction statistics for piracy and contraband activities. The information provided by the CNCP on its IPR Hotline indicates that 17,622 emails, 2,958 calls and 1,935 other notices resulted in 67 "judicial actions."

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Other Significant Developments  
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¶16. (U) Other significant developments since Post's Special 301 submission in February include:

-- Executive Director Andre Barcellos attended a June session of the USPTO Global Intellectual Property Academy (GIPA) training in Virginia - a first for a CNCP Executive Director.

-- The Brazilian state of Bahia recently formed an anti-piracy police unit, joining the states of Sao Paulo, Rio de Janeiro, Minas Gerais, Pernambuco and Rio Grande do Sul, which already have established state anti-piracy committees.

-- The governor of Pernambuco, Eduardo Campos, has publicly directed his state police force to cooperate with Federal Police in enforcing IPR statutes.

¶17. (SBU) Comment: Post recommends that Brazil remain on the Special 301 Watch List based on the GoB's ongoing commitment to a strong overall anti-piracy enforcement regime and its determined actions to improve its patent and trademark processing. However, Post feels that the GOB's need to undertake a more vigorous effort to address photocopying of copyrighted material by campus copy shops, improve a low rate of convictions for IPR piracy, and adequately police secondary smuggling routes into the country preclude any upgrade of the country's status at this time.

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